

LFC Requester:	Clint Elkins
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date
Prepared: 2/15/15
Bill No: SB549

Sponsor: Sen. Phil A. Griego **Agency Code:** Attorney General's Office

Short Title: Architecture Practice Without License **Person Writing Analysis:** Peggy Jeffers, AAG
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

SB549 makes several changes to the Architectural Act. First, it adds a new subsection “K” to Section 61-15-4 of the Architectural Act that gives the Board of Examiners for Architects authority to administratively prosecute, pursuant to the Uniform Licensing Act, an individual charged with unregistered practice of architecture, and to impose a civil penalty of up to \$25,000.00 on such an individual.

The bill also adds a new subsection “A” to Section 61-15-10 setting forth factors (such as the seriousness of the violation, the economic benefit received by the violator from the violation, and the violator’s history) that the Board is to consider in assessing the amount of the civil penalty if it determines, after a disciplinary hearing, that unregistered practice occurred. The title of 61-15-10 is changed to add the word “civil” before penalties and to add “criminal charges” (the present version of Section 61-15-10 already contains provisions relating to criminal charges).

The bill also adds language to Section 61-15-5(D) making an exception to the confidentiality of data acquired by the Board relating to actual or potential disciplinary action, allowing it to be disclosed to the extent necessary to carry out the Board’s purpose or in a judicial appeal from a Board action.

Section 61-15-5(E) is amended to state that the Board may distribute or sell copies of the roster showing names and addresses of all registered architects to the national council of architectural registration boards as well as to the general public.

SB 549 also changes the registration requirements for architects from other jurisdictions in Section 61-15-6. In both subsection “F” and “G” relating respectively to those certified and not certified by NCARD, SB 549 adds the following language “for review, which the board shall act upon” to the prefatory language before the description of what evidence of qualification the person must submit to the Board in order to become registered in New Mexico.

In Section 61-15-6(F)(2), the requirement for evidence satisfactory to the Board of qualification in “design for seismic forces” is changed to evidence satisfactory to the Board of qualification in “comprehensive design.”

SB 549 changes Section 61-15-6(G) to require registered architects in other jurisdictions, certified by NCARB, to hold their registration in a position of authority for a period of time as prescribed by Board rule. As in subsection “F,” SB 549 adds a requirement of qualification in comprehensive design.

New language added to Section 61-15-8(A)(2) clarifies that an architect performing architectural services on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction is exempt from registration under the Architectural Act.

In Section 61-15-9(B)(4), under “Project Exemptions,” SB549 changes the source of definition of “nonresidential buildings.”

FISCAL IMPLICATIONS

None identified for this office.

SIGNIFICANT ISSUES

As the Act presently exists, it does not contain a provision for a civil penalty for unregistered practice, although pursuant to the Uniform Licensing Act’s (ULA’s) general provision contained in Section 61-1-3.2, the Board may impose a civil penalty of up to \$1,000.00 for such activity. There are other occupations or professions regulated under the ULA whose acts give their boards authority to impose civil penalties greater than the general provision contained in the ULA. For instance, the Board of Licensure for Professional Engineers and Professional Surveyors is authorized to impose civil penalties of up to \$7,500.00 for the unlicensed practice of engineering (Section 61-23-23.1 NMSA) or surveying (Section 61-23-27.15 NMSA), and the factors it is to consider in determining the amount of the penalty are the same as those SB549 would require the Board of Examiners for Architects to consider.

Section 61-15-5(E) is amended to state that the Board may distribute or sell copies of the roster showing names and addresses of all registered architects to the national council of architectural registration boards as well as to the general public. At present it states that the Board may distribute or sell copies of the roster to the general public.

In Section 61-15-6(F)(2), the requirement for evidence satisfactory to the Board of qualification in “design for seismic forces” is changed to evidence satisfactory to the Board

of qualification in “comprehensive design.” According to Board staff, in order to be certified by NCARB, candidates must take the Architectural Registration Exam, which now requires knowledge of design for seismic forces, so it is no longer necessary for such knowledge to be made explicit in this subsection of our statute. On the other hand, qualification in comprehensive design is not something included in NCARB certification, but the amendment to Section 61-15-6(F) would ensure that registrants had that qualification. The bill would add Section 61-15-6(F)(3), allowing the Board to prescribe other requirements by rule.

PERFORMANCE IMPLICATIONS

None identified for this office.

ADMINISTRATIVE IMPLICATIONS

None identified for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

The language “to the extent necessary to carry out the board’s purpose” in the proposed change to Section 61-15-5(D) is broad and ambiguous. Rather than the phrase “judicial appeal,” the Legislature might want to consider “appeal pursuant to Section 61-1-17” or “appeal to the district court.” It appears implicit already that such information would be able to be disclosed in an appeal from a Board action, or else an appeal to the district court pursuant to Section 61-1-17 of the ULA would be impossible.

Addition of the language “for review, which the board shall act upon” in subsections “F” and “G” of Section 61-15-6 appears unnecessary, as the Board already is required by Section 61-15-4(H) to consider applications for registration and issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that the person is fully qualified to practice architecture. Addition of the language “which the board shall act upon” at the end of subsection “G” makes the sentence grammatically awkward.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A